





# In the Supreme Court of the United States

OCTOBER TERM, 1938

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No. 22

THE UNITED STATES OF AMERICA, PETITIONER

v.

CONTINENTAL NATIONAL BANK AND TRUST COMPANY,  
TRUSTEE UNDER THE LAST WILL AND TESTAMENT  
OF JAMES DUGGAN, DECEASED, ET AL.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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MOTION TO JOIN NEW PARTY DEFENDANT

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Comes now the Solicitor General, on behalf of the United States, petitioner in the above-entitled proceeding, and moves that an order be entered by the Court joining as a party defendant in this proceeding the Continental Illinois National Bank & Trust Company of Chicago, a national banking corporation with offices at Chicago, Illinois, as trustee under the power of appointment exercised

by Henry Duggan, deceased, by his last will and testament, over property previously held in trust by Continental National Bank & Trust Company of Chicago in trust under the will of James Duggan, deceased, and that the action be continued against the Continental Illinois National Bank & Trust Company of Chicago in such capacity as well as against the other parties heretofore joined as defendants.

ROBERT H. JACKSON,  
*Solicitor General.*

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**BRIEF IN SUPPORT OF MOTION TO JOIN AN ADDITIONAL  
DEFENDANT**

1. This is an equity action by the United States, and was originally instituted against several defendants, one of which was Continental National Bank & Trust Company of Chicago as residuary trustee under Item 6 of the last will and testament of James Duggan, deceased, which left the residue of his estate to such Bank to pay the income therefrom to Henry Duggan for life. Item 8 of that will provided that upon the death of Henry Duggan the trust should cease and determine, and the trust estate then in the hands of the trustee "shall be paid, transferred, and delivered over as may be designated and appointed in and by the last Will and Testament of my said brother, Henry Duggan".

(R. 8). Henry Duggan had received a bequest of \$50,000 under Item 2 of the will of James Duggan (R. 7), and for that reason had been joined as an original party defendant in the proceeding below.

Henry Duggan died testate on October 16, 1937, prior to the argument of this case before the Circuit Court of Appeals, but that fact was not revealed to the court below and counsel for petitioner were not so advised until after the decision of the court below.

The brief filed in opposition to the petition for a writ of certiorari suggested the death of Henry Duggan, but no appearance or request for substitution was made by his executors. Counsel for petitioner thereupon filed a motion with the Court for substitution in his stead of the Continental Illinois National Bank & Trust Company of Chicago, the duly appointed and qualified executor of his last will and testament. That motion is now before the Court for consideration.

Counsel for the Continental National Bank & Trust Company, appearing specially, have filed a motion to dismiss the writ of certiorari in so far as it relates to that Bank as trustee under Item 6 of James Duggan's last will and testament. A statement opposing the granting of that motion has been filed by the petitioner, wherein it is shown that the motion is without merit and should be denied.

2. The affidavit of an officer of Continental National Bank & Trust Company submitted in support of its motion to dismiss indicates that the Continental Illinois National Bank & Trust Company probably has succeeded to the title of the property previously held in trust for the benefit of the United States. Although the facts now disclosed are not sufficient to show that the Continental National Bank & Trust Company has been discharged from liability under its trust, or that it cannot respond to a judgment against it, the Continental Illinois National Bank & Trust Company now has such an interest in the proceeding that it should be ordered to appear and defend this action.

If the Continental Illinois National Bank & Trust Company has succeeded to the title of the property impressed with a trust in favor of the United States it can be joined as a party. Compare *Greenleaf v. Queen*, 1 Pet. 138; *United States v. Dunn*, 268 U. S. 121; *Larimer v. Snell*, 181 Ill. App. 50; *Ekstrom v. United States*, 21 F. Supp. 338 (C. Cls.).

Joinder of new parties under circumstances such as presented by the record in this case is specifically provided for in Rule 25 (c) of the Federal Rules of Civil Procedure. A similar provision, making express provision for joinder in the trial court or the appellate courts, is contained in Section 54 of the Civil Practice Act of the State of Illinois, approved June 23, 1933. See Jones Illinois Statutes, Annotated, Vol. 18, p. 249, c. 104.054.

In view of the undisclosed character and extent of the alleged transfer of trust assets, and in order that the interest of the petitioner may be protected until the liability can be judicially determined, the substitution requested should be ordered.

Respectfully submitted.

ROBERT H. JACKSON,  
*Solicitor General.*

OCTOBER 1938.